

TITLE 13. PUBLIC SAFETY**CHAPTER 8. DEPARTMENT OF PUBLIC SAFETY
LOCAL RETIREMENT BOARD**

(Authority: A.R.S. § 38-841 et seq.)

ARTICLE 1. PROCEDURES*Article 1, consisting of Sections R13-8-101 through R13-8-114, adopted effective July 22, 1994 (Supp. 94-3).***Section**

- R13-8-101. Definitions and Interpretation
- R13-8-102. Distribution of Information, Retirement Forms, and Applications
- R13-8-103. New Memberships
- R13-8-104. Normal Retirement and Deferred Retirement
- R13-8-105. Disability Retirement
- R13-8-106. Medical Examination of and Recovery by Member with Accidental or Ordinary Disability
- R13-8-107. Survivor's Benefits
- R13-8-108. Notification to Claimant of Determination as to Right of Claimant to a Benefit
- R13-8-109. Benefits Calculations
- R13-8-110. Termination of Benefits
- R13-8-111. Substantial Gainful Employment of Member with Accidental or Ordinary Disability Pension
- R13-8-112. Rehearing on Original Determination
- R13-8-113. Review of Decision by Local Board on Rehearing of Original Determination
- R13-8-114. Transcripts

ARTICLE 1. PROCEDURES**R13-8-101. Definitions and Interpretation**

- A. "System" means the Public Safety Personnel Retirement System, created by the provisions of A.R.S. Title 38, Chapter 5, Article 4, (A.R.S. § 38-841 et seq.).
- B. "Local board" means the Department of Public Safety Local Retirement Board for the Public Safety Personnel Retirement System established pursuant to A.R.S. § 38-847.
- C. "Secretary" means the secretary of the local board.
- D. Interpretation and application of the rules in this Chapter shall be consistent with the definitions set forth in A.R.S. § 38-842.

Historical Note

Adopted effective July 22, 1994 (Supp. 94-3).

R13-8-102. Distribution of Information, Retirement Forms, and Applications

- A. Information explaining the system received from the fund manager, shall be maintained by the secretary who shall distribute the information:
 - 1. To potential members within one month of hire,
 - 2. Upon request, and
 - 3. Upon application for retirement.
- B. The retirement forms and applications are provided by the fund manager and shall be maintained by the secretary who shall distribute them upon request.

Historical Note

Adopted effective July 22, 1994 (Supp. 94-3).

R13-8-103. New Memberships

- A. Within one month of hire, the secretary shall distribute membership forms to the newly employed commissioned officers.
- B. After receipt of completed membership forms, the secretary shall request each applicant's medical report from the medical advisor of the Department of Public Safety and review the medical reports. The secretary shall report to the local board

when the medical advisor has indicated that any applicant has a condition which required a category II medical review for compliance with the Arizona Peace Officer Standards and Training Board medical requirements.

- C. The local board at its regularly scheduled meetings shall review the applications for new membership for eligibility in the system and the medical reports of any applicants with a medical waiver.
- D. If an applicant has a physical or mental condition or injury that existed or occurred prior to the date of membership in the system, but is otherwise eligible for membership, the local board shall approve membership, excluding accidental or ordinary disability benefits relating to the preexisting physical or mental condition or injury.
- E. If the local board denies membership or approves membership with an exclusion based on a preexisting condition, the secretary shall so notify the applicant.
- F. The local board may review on its own initiative and redetermine its prior decisions on membership and exclusions. The local board shall notify any member of any meeting at which the local board will review a prior decision affecting a member's membership.

Historical Note

Adopted effective July 22, 1994 (Supp. 94-3).

R13-8-104. Normal Retirement and Deferred Retirement

- A. When a member applies for normal retirement or deferred retirement, the member shall be provided with the appropriate forms, information on the documentation required, and assistance in applying for retirement.
- B. When all required forms and documentation have been fully completed and submitted to the secretary, the application for normal retirement or deferred retirement shall be placed on the agenda for the next regularly scheduled meeting of the local board, provided the submission is completed ten calendar days prior to the meeting.
- C. Upon a member's application, the member shall be permitted to address the local board.

Historical Note

Adopted effective July 22, 1994 (Supp. 94-3).

R13-8-105. Disability Retirement

- A. When a member applies for ordinary, accidental, or temporary disability pension, the member shall be provided with the appropriate forms, information on the documentation required, and assistance in applying for a disability pension.
- B. When all required forms and documentation have been fully completed and submitted to the secretary, the secretary shall schedule the appointed Medical Board, notify the claimant of the date, time, and location of the Medical Board examination, and forward the application and all appropriate papers to the Medical Board.
- C. If the claimant is applying for an ordinary disability pension, the local board shall request the Medical Board to address specifically:
 - 1. Whether the claimant
 - a. Has a physical condition which totally and permanently prevents the claimant from performing a reasonable range of duties within the member's department, or

- b. Has a mental condition which totally and permanently prevents the claimant from engaging in any substantial gainful activity, and
- 2. Whether the claimant's disability is the result of a physical or mental condition or injury that existed or occurred prior to the claimant's date of membership in the system.
- D.** If the claimant is applying for an accidental disability pension, the local board shall request the Medical Board to address specifically:
 - 1. Whether the claimant has a physical or mental condition which totally and permanently prevents the claimant from performing a reasonable range of duties within the member's job classification,
 - 2. Whether the disabling condition was incurred in the performance of the member's job duties, and
 - 3. Whether the claimant's disability is the result of a physical or mental condition or injury that existed or occurred prior to the claimant's date of membership in the system.
- E.** If the claimant is applying for a temporary disability pension, the local board shall request the Medical Board to address specifically:
 - 1. Whether the claimant has a physical or mental condition which totally and temporarily prevents the claimant from performing a reasonable range of duties within the member's department, and
 - 2. Whether the disabling condition was incurred in the performance of the member's job duties.
- F.** Upon receipt of the Medical Board's evaluation, the secretary shall forward a copy of the evaluation to the claimant, and the application for disability retirement shall be placed on the agenda for the next regularly scheduled meeting of the local board, provided the evaluation is received ten calendar days prior to the meeting.
- G.** Upon a member's application, the member shall be permitted to address the local board.

Historical Note

Adopted effective July 22, 1994 (Supp. 94-3).

R13-8-106. Medical Examination of and Recovery by Member with Accidental or Ordinary Disability

- A.** When the local board determines that a member qualifies for an ordinary or accidental disability retirement pension and the member will not reach normal retirement date within one year of the initial determination, the local board shall determine whether and when to request medical examination pursuant to A.R.S. § 38-844(D).
- B.** If the local board requests the medical examination, the secretary shall so calendar the requested medical examination; process and direct the relevant medical documents; notify the pensioner of the date, time, and location of the medical examination; and forward appropriate documentation to the doctors or clinic performing the medical examination.
- C.** The local board shall request the Medical Board performing the medical examination to address specifically whether the pensioner has sufficiently recovered to be able to engage in a reasonable range of duties within the member's job classification.
- D.** Upon receipt of the report of the medical examination, the secretary shall forward a copy to the pensioner and place the item on the agenda for the next regularly scheduled meeting of the local board, provided the report is received ten calendar days prior to the meeting.
- E.** The pensioner shall be permitted to address the local board at any board meeting at which a determination on recovery may be made.

- F.** If the local board determines that the pensioner has recovered sufficiently to be able to engage in a reasonable range of duties within the member's job classification, the local board shall so notify the pensioner and the member's department. If the member's department makes an offer of employment to the member, the local board shall terminate benefits.
- G.** If the local board determines that the pensioner has not recovered, the local board shall determine whether and when to request another medical examination pursuant to A.R.S. § 38-844(D).
- H.** Notwithstanding the provisions of subsections (A) and (G), the local board may request a medical examination pursuant to A.R.S. § 38-844(D) at any time prior to a disability pensioner's normal retirement date.

Historical Note

Adopted effective July 22, 1994 (Supp. 94-3).

R13-8-107. Survivor's Benefits

- A.** When a surviving spouse or a guardian applies for benefits, the surviving spouse or guardian shall be provided with the appropriate forms, information on the documentation required, and assistance in applying for death benefits for surviving spouse, guardian, and eligible children.
- B.** When all required forms and documentation have been fully completed and submitted to the secretary, the application for survivor's benefits shall be placed on the agenda for the next regularly scheduled meeting of the local board, provided the submission is completed ten calendar days prior to the meeting.
- C.** Upon application, the surviving spouses, guardians, and eligible children shall be permitted to address the local board.

Historical Note

Adopted effective July 22, 1994 (Supp. 94-3).

R13-8-108. Notification to Claimant of Determination as to Right of Claimant to a Benefit

- A.** When the local board approves applications for retirement, disability pensions, and survivor's benefits, the claimant shall receive notification of the local board's original determination either by attending the meeting at which the action was taken, by certified mail, or by receiving benefits from the system pursuant to the local board's original action.
- B.** When the local board denies applications for retirement, disability pensions, and survivor's benefits, the claimant shall receive notification of the local board's original determination either by attending the meeting at which the action was taken or by certified mail. The notification shall include notification to claimant of the statutory right to apply for a rehearing on the original determination within 60 days after receipt of notification.

Historical Note

Adopted effective July 22, 1994 (Supp. 94-3).

R13-8-109. Benefits Calculations

- A.** The local board delegates to the secretary the calculation of service retirement benefits, including all service retirements and surviving spouse, guardian, and eligible-child benefits for deceased members who were receiving service retirements, and the calculation of disability retirement benefits, including all disability retirements, surviving spouse, guardian, and eligible-child benefits for deceased members who were receiving disability retirements, and surviving spouse, guardian, and eligible-child benefits for non-retired, deceased members.
- B.** Upon request by a member, the secretary shall estimate the amount of the monthly pension at the time the member applies for retirement.

- C. Subsequent to the issuance of a member's last paycheck, the secretary shall calculate the service retirement benefits or the disability retirement benefits.
- D. The member, surviving spouse, guardian, or eligible child shall receive notification of the calculation of benefits by receiving benefits from the system or by certified mail.

Historical Note

Adopted effective July 22, 1994 (Supp. 94-3).

R13-8-110. Termination of Benefits

- A. Upon the death of a retired member, the local board shall terminate the member's benefits and shall entertain applications for survivor's benefits, if and when submitted.
- B. When an eligible child is no longer eligible, the local board shall terminate the child's pension and, where appropriate, any guardian or conservator's pension.

Historical Note

Adopted effective July 22, 1994 (Supp. 94-3).

R13-8-111. Substantial Gainful Employment of Member with Accidental or Ordinary Disability Pension

- A. For purposes of applying A.R.S. § 38-844(E), "substantial gainful employment" shall mean work, business, or activity in which the member is engaged for compensation unless the work, business, or activity is principally in or in conjunction with a recognized program of education, instruction, or training which allows a member receiving disability payments to acquire skills and knowledge necessary to seek employment in a field not covered by the system.
- B. For purposes of applying A.R.S. § 38-844(E), "earned income" shall include income or other compensation received for labor performed or services rendered by a member on disability. Such income and other compensation includes wages, salary, retainers, commissions, fees, and compensation for the member's labor or services which would otherwise be taxable as income, such as housing, automobile expenses, travel, and gifts. "Earned income" does not include income received by the member from savings accounts, stocks, bonds, proceeds from rental properties, promissory notes, and other forms of capital investments or from pensions, disability insurance, or social security.
- C. No later than April 30 of each year, each member receiving disability payments during the period prior to normal retirement date shall provide a notarized statement to the local board which identifies all earned income received by the member in the previous calendar year and describes the work, business, or activities in which the member was engaged for compensation. The statement shall also include the fair market value of all benefits received by the member during the previous calendar year as compensation for such work, business, or activity. Copies of all income tax statements and W-2 forms reflecting the member's income for the previous calendar year shall be attached to the notarized statement.
- D. Upon written request by a member, the local board may grant the member an additional 30 days to allow the member to provide the local board with the information required under subsection (C).
- E. If a member fails to report earned income as required by this rule, the local board shall suspend any further disability payments to the member until such time as the member reports such earned income for the previous year.

Historical Note

Adopted effective July 22, 1994 (Supp. 94-3).

R13-8-112. Rehearing on Original Determination

- A. The local board shall conduct rehearings pursuant to A.R.S. § 38-847(H) as an adjudicative proceeding under A.R.S. Title 41, Chapter 6, Article 6 (A.R.S. § 41-1061 et seq.).
- B. If the fund manager applies for a rehearing, the claimant whose benefit determination may be affected shall be a party to the proceeding.
- C. By ten calendar days prior to the rehearing, the claimant or fund manager shall submit to the local board a list of witnesses whom the claimant or fund manager intends to call to testify at the hearing and of all exhibits which the claimant or fund manager intends to use at the hearing as well as a copy of all listed exhibits.
- D. By ten calendar days prior to the rehearing, the claimant or fund manager may submit to the local board a written statement setting forth the facts of the case and a brief addressing relevant issues.
- E. If the claimant, fund manager, or local board desires subpoenas pursuant to A.R.S. § 41-1062(A)(4), said subpoenas shall be submitted at least ten calendar days prior to the rehearing to the secretary for issuance by the presiding hearing officer. Service of the subpoenas is the responsibility of the party requesting issuance of the subpoenas.
- F. Applications for permission to take depositions pursuant to A.R.S. § 41-1062(A)(4) shall be submitted to the secretary for determination by the presiding hearing officer.
- G. Unless the local board decides otherwise, the chairperson of the local board shall function as the presiding hearing officer. The local board may appoint a hearing officer to preside over the rehearing and to make written findings of fact and conclusions of law and a written recommendation to the local board with respect to any issues presented at the rehearing.
- H. The burden of proof for establishing a disability shall be with the claimant.

Historical Note

Adopted effective July 22, 1994 (Supp. 94-3).

R13-8-113. Review of Decision by Local Board on Rehearing of Original Determination

- A. Except as provided in subsection (H), the decision by the local board on rehearing of the original determination may be vacated and a new rehearing granted on motion of the aggrieved party for any of the following causes materially affecting that party's rights:
 1. Irregularity in the administrative proceedings of the local board or the hearing officer or prevailing party, or any order or abuse of discretion, whereby the moving party was deprived of a fair hearing.
 2. Misconduct of the local board, the hearing officer, or prevailing party.
 3. Accident or surprise which could not have been prevented by ordinary prudence.
 4. Material evidence, newly discovered, which with reasonable diligence could not have been discovered and produced at the rehearing.
 5. Error in the admission or rejection of evidence, or other errors of law occurring at the rehearing or during the progress of the administrative proceeding.
 6. That the decision is the result of passion or prejudice.
 7. That the decision is not justified by the evidence or is contrary to law.
- B. A new rehearing may be granted to all or any of the parties and on all or part of the issues for any of the reasons for which new rehearings are authorized by law or rule of the local board. On the granting of a motion for review, the local board may take additional testimony, amend findings of fact and conclusions

of law, or make new findings and conclusions and direct the entry of a new decision.

- C. The motion for review shall be in writing, shall specify generally the grounds upon which the motion is based, and may be amended at any time before it is ruled upon by the local board.
- D. A motion for review shall be filed not later than 15 calendar days after receipt of notification of the decision by the local board on the rehearing of original determination. For purposes of this subsection, the claimant shall receive notification either by attending the meeting at which the decision is made or by certified mail.
- E. Any party to the proceeding may file a response to the motion or amended motion within ten calendar days after service of the motion or amended motion. The local board may require filing of briefs upon issues raised in the motion and may provide for oral argument.
- F. When a motion for rehearing is based upon affidavits, they shall be served with the motion. All parties to the proceeding have ten calendar days after such service within which to serve opposing affidavits, which period may be extended for an additional period not exceeding 20 calendar days either by the local board for good cause shown or by the parties by written stipulation. The local board may permit reply affidavits.
- G. Not later than 40 calendar days after the decision, the local board of its own initiative may order a new rehearing on motion of a party. Additionally, after giving the parties notice and an opportunity to be heard on the matter, the local board

may grant a motion for review, timely served, for a reason not stated in the motion. In either case the local board shall specify the grounds therefore.

- H. If the local board makes specific findings that the immediate effectiveness of a decision in a particular matter is necessary for the protection of the system and its members and that a review of the decision is impracticable, unnecessary, or contrary to the public interest, the decision may be issued as a final decision without opportunity for a review. If a decision is issued as a final decision without an opportunity for review, any application for judicial review of the decision shall be made within the time limits permitted by law for applications for judicial review of the local board's final decisions.

Historical Note

Adopted effective July 22, 1994 (Supp. 94-3).

R13-8-114. Transcripts

If any party designates any portion of the oral proceedings before the local board or hearing officer as part of the record on review in the superior court, the cost of the transcript shall be paid by the party so designating unless the local board waives the cost of transcription upon good cause shown. A request for waiver of the cost of the transcription shall be in writing and served upon the local board at the time of the service of the complaint.

Historical Note

Adopted effective July 22, 1994 (Supp. 94-3).